LIBRARY
SUPREME COURT, U. S.

FILED
AUG 14 1970
ROBERT SEAVER, CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1970

No. 543

THE COMMONWEALTH OF PUERTO RICO, *Appellant*,

v.

THE RIDGE TOOL CO.,

THE RIDGE TOOL INTERNATIONAL CO., INC.,

and

ARTURO FORNARIS, JR., *Appellees*.

On Appeal From the United States Court of Appeals for the First Circuit

## JURISDICTIONAL STATEMENT

MIRIAM NAVEIRA DE RODON
Director, Office of Monopolistic Affairs
Puerto Rico Department of Justice
P. O. Box 192
Old San Juan, Puerto Rico 00902
*Counsel for Appellant*

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

## INDEX


| | Page |
|---|---|
| Opinion Below | 2 |
| Jurisdiction | 2 |
| Questions Presented | 4 |
| Statute Involved | 5 |
| Statement | 5 |
| The Questions Are Substantial | 9 |
| 1. The Court of Appeals exceeded its authority in denying the Commonwealth of Puerto Rico the right to control business relationships within extremely broad limits | 9 |
| 2. The Court of Appeals failed to follow this Court's criteria for determining the constitutionality of retrospective legislation | 12 |
| 3. The Court of Appeals should have abstained from determining constitutionality pending an authoritative interpretation of Law 75 by the Puerto Rican courts | 15 |
| 4. The Court of Appeals improperly ruled on the constitutionality of Law 75 in the absence of a factual record | 17 |
| 5. The error of the Court of Appeals is far-reaching | 18 |
| Conclusion | 19 |
| Appendices | |
| Opinion of Court of Appeals | App. A |
| Memorandum and Order of District Court | App. B |
| Appellant's Notice of Appeal | App. C |
| Text of Statute Involved | App. D |

## TABLE OF AUTHORITIES


| CASES: | Page |
|---|---|
| *Alabama* v. *Arizona*, 291 U.S. 286 (1934) | 18 |
| *Americana of Puerto Rico, Inc.* v. *Kaplus*, 368 F.2d 431 (3rd Cir. 1966) | 4 |
| *City of Meridian* v. *Southern Bell Tel. & Tel. Co.*, 358 U.S. 639 (1959) | 15, 16 |
| *Day-Brite Lighting, Inc.* v. *Missouri*, 342 U.S. 421 (1952) | 9, 12, 15 |
| *Detres* v. *Lyons Bldg. Corp.*, 234 F.2d 596 (7th Cir. 1956) | 4 |
| *East New York Savings Bank* v. *Hahn*, 326 U.S. 230 (1945) | 13, 15 |
| *El Paso* v. *Simmons*, 379 U.S. 497 (1965) | 4, 13 |
| *Ferguson* v. *Skrupa*, 372 U.S. 726 (1963) | 10, 12, 15 |
| *Home Bldg. & Loan Ass'n.* v. *Blaisdell*, 290 U.S. 398 (1934) | 14 |
| *International Union* v. *Eagle-Picher M. & S. Co.*, 325 U.S. 335 (1945) | 3 |
| *Mora* v. *Mejias*, 206 F.2d 377 (1st Cir. 1953) | 4 |
| *Muskrat* v. *United States*, 219 U.S. 346 (1911) | 18 |
| *Nebbia* v. *New York*, 291 U.S. 502 (1934) | 15 |
| *Reetz* v. *Bozanich*, — U.S. —, 25 L. Ed. 2d 68 (1970) | 15 |
| *Treigle* v. *Acme Homestead Ass'n*, 297 U.S. 189 (1936) | 13, 14 |
| *United Gas Pipe Line Co.* v. *Ideal Cement Co.*, 369 U.S. 134 (1962) | 15 |
| *Veix* v. *Sixth Ward Building & Loan Ass'n*, 310 U.S. 32 (1940) | 13, 14 |
| *West Coast Hotel Co.* v. *Parrish*, 300 U.S. 379 (1937) | 15 |
| *Williamson* v. *Lee Optical of Oklahoma, Inc.*, 348 U.S. 483 (1955) | 15 |

| FEDERAL STATUTES: | |
|---|---|
| 28 U.S.C. § 1254(2) | 3 |
| 28 U.S.C. § 1257 | 4 |
| 28 U.S.C. § 1258 | 4 |
| 28 U.S.C. § 1292(b) | 2 |
| 28 U.S.C. §§ 1441 *et seq.* | 2 |

COURT RULE: Page

Rule 61, Supreme Court of the United States ..... 3

MISCELLANEOUS:

S. 1967, 91st Cong., 1st Sess. (1969) ..... 19

116 Cong. Rec. D 501 (Daily Ed. May 19, 1970) ..... 19

New York Times Encyclopedic Almanac 1970 ..... 5

Record of Meetings of the Legislative Assembly of Puerto Rico of 1964, p. 1531 ..... 6

37 Harv. L. Rev. 1002 (1924) ..... 18

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1970

No.

THE COMMONWEALTH OF PUERTO RICO, *Appellant*,

v.

THE RIDGE TOOL CO.,

THE RIDGE TOOL INTERNATIONAL CO., INC.,

and

ARTURO FORNARIS, JR., *Appellees*.

**On Appeal From the United States Court of Appeals for the First Circuit**

## JURISDICTIONAL STATEMENT

Appellant appeals from the judgment of the United States Court of Appeals for the First Circuit entered on March 17, 1970 holding a statute of the Commonwealth of Puerto Rico unconstitutional and submits this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial federal questions are presented.

## OPINION BELOW

The opinion of the United States Court of Appeals for the First Circuit, attached hereto as Appendix A, is reported at 423 F.2d 563 (1970).

The unreported Memorandum and Order of the United States District Court for the District of Puerto Rico is attached as Appendix B.

## JURISDICTION

This action was commenced by Arturo Fornaris, Jr. against The Ridge Tool Co. and its subsidiary, The Ridge Tool International Co., Inc., in the Superior Court of the Commonwealth of Puerto Rico under Law 75 of the Laws of the Commonwealth of Puerto Rico known as the Dealers' Contracts Law. The case was subsequently removed to the United States District Court for the District of Puerto Rico, pursuant to 28 U.S.C. §§ 1441 *et seq.* The Commonwealth of Puerto Rico was an intervenor in the proceeding.

In the District Court the defendant moved to dismiss on the ground that Law 75 was unconstitutional. This motion was denied by order of the District Court on August 8, 1969. In denying the motion, the District Judge certified, pursuant to 28 U.S.C. § 1292(b), that his order involved a controlling question of law as to which there was substantial ground for difference of opinion, thus making possible an immediate appeal from the otherwise interlocutory order.

On appeal, the United States Court of Appeals for the First Circuit reversed, holding Law 75 invalid as repugnant to the due process clause of either the fifth or fourteenth amendment to the United States Constitution. The opinion was rendered March 17, 1970,

and judgment was entered that same day. A notice of appeals to this Court, attached as Appendix C, was filed on behalf of the Intervenor, the Commonwealth of Puerto Rico, on May 26, 1970.

The jurisdiction of the Supreme Court of the United States to review this decision by direct appeal is conferred by 28 U.S.C. § 1254(2):

> "Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> (2) By appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, . . ."

**The Commonwealth of Puerto Rico Has Standing**

As an intervenor below, the Commonwealth of Puerto Rico is a party to this proceeding and may thus seek review of the judgment in its own right. 28 U.S.C. § 1254(2); cf., *International Union* v. *Eagle-Picher M. & S. Co.*, 325 U.S. 335 (1945).

**The Statute in Question Is a "State Statute"**

The Commonwealth of Puerto Rico is not a state, but its laws should be treated as state laws for the purpose of an appeal to this Court.

Rule 61 of the Supreme Court of the United States provides as follows:

> "The term 'state court' when used in these rules includes the Supreme Court of the Commonwealth of Puerto Rico, *and references in these rules to the law and statutes of a state include the law and statutes of the Commonwealth of Puerto Rico.*" [Emphasis added.]

In addition, decisions of the Supreme Court of the Commonwealth of Puerto Rico are treated exactly the

same as those of the highest courts of the several states regarding review in this Court by appeal or certiorari. Compare, 28 U.S.C. § 1257 with 28 U.S.C. § 1258.

Furthermore, a number of cases have recognized Puerto Rico to be a state within the meaning of certain statutory provisions. In the case of *Mora* v. *Mejias*, 206 F.2d 377 (1st Cir., 1953), the Court of Appeals for the First Circuit stated at p. 386 that the "word 'State' may in the context of a particular act of Congress have a broader connotation than a state in the federal Union." The court continued by saying, at p. 387 that "Puerto Rico has thus not become a State in the federal Union like the 48 States, but it would seem to have become a State within a common and accepted meaning of the word." Cf., *Americana of Puerto Rico, Inc.* v. *Kaplus*, 368 F.2d 431 (3rd Cir. 1966); *Detres* v. *Lyons Bldg. Corp.*, 234 F.2d 596 (7th Cir. 1956).

A Puerto Rican statute is, therefore, to be considered a "state statute" for the purpose of an appeal to this Court.[1]

## QUESTIONS PRESENTED

1. Whether the Dealers' Contracts Law, Law 75 of the Laws of the Commonwealth of Puerto Rico, as interpreted by the Court of Appeals, is invalid as repugnant to the due process clause of either the fifth or fourteenth amendment to the United States Constitution.

---

[1] In the event an appeal is deemed improper, however, the Commonwealth of Puerto Rico asks specifically that this document be treated as a petition for certiorari. *El Paso* v. *Simmons*, 379 U.S. 497 (1965).

2. Whether the Court of Appeals erred in holding Law 75 unconstitutional in the absence of any factual record or of a definitive interpretation of the statute by the Supreme Court of Puerto Rico.

## STATUTE INVOLVED

The Dealers' Contracts Law in effect at the time this case arose is set forth as Appendix D hereto. Law 75, 1964 Laws of Puerto Rico, as amended by Law 104, 1965 Laws of Puerto Rico.

## STATEMENT

This case arises because of the unusual significance to the Puerto Rican economy of dealerships and distributorships in the Commonwealth, the Puerto Rican legislature's determination of a need to legislate with respect thereto, and the application of such legislation to a specific manufacturer-dealer relationship.

The economy of the Commonwealth of Puerto Rico is well known to be behind that of the mainland United States. The per capita income of Puerto Rico ($1,230 per annum) is substantially below that of the State of Mississippi ($2,057 per annum) which is the lowest of the fifty states. In such a context, it is obvious that termination of a number of dealerships, of which there are many in Puerto Rico, can have a relatively much greater impact than a similar number of terminations in a state of comparable population.[2]

Because Puerto Rico has relatively few natural resources or indigenous industries, the Commonwealth is forced to rely heavily upon mainland United States

---

[2] Puerto Rico with 2,741,800 people has a greater population than 25 of the 50 states, falling between the 25th State, Iowa (2,771,000), and the 26th State, South Carolina (2,587,000). The New York Times Encyclopedic Almanac 1970.

and foreign manufacturing concerns for consumer goods and other products. The great distance between Puerto Rico and the mainland and the significant difference in cultures virtually require that mainland products be introduced to the people of Puerto Rico, initially at least, by local businessmen. Distributorships and dealerships accordingly make up a large proportion of those Puerto Ricans in business for themselves. As relatively very small entrepreneurs, however, the Puerto Rican distributors and dealers are at a considerable disadvantage vis-a-vis the mainland manufacturers they serve.

This disparity in economic and bargaining power led inevitably to abuses of the relationship. Manufacturing concerns were creating dealerships at the local level to introduce their products to the people of Puerto Rico, but after a favorable market had been developed by the dealer, the dealership would be abruptly terminated. The manufacturer would then either assume distribution itself—capitalizing on the already established market—or find other dealers willing to operate on a lower commission because of the lack of risk involved. The dealer's investment in capital, time, and effort was completely extinguished and no indemnity or reparation was made—nor did any contract so provide. Such was the weakness of the dealer's position. Eventually, the Puerto Rican legislature moved to correct the injustice by enacting Law 75.

The Record of Meetings of the Legislative Assembly of Puerto Rico of 1964, p. 1531, gives this statement of the background of the law:

> "Your Committee on Industry and Commerce has considered the substitute to S.B. 673 and has

the honor of proposing that it be approved without amendment.

"The problem created in the system of distribution in Puerto Rico by the intemperate action of foreign and domestic business concerns that, without just cause, cancel their relationships with their distributors and agents in Puerto Rico, as soon as those have created a favorable market for their products, frustrating the legitimate expectations and interests of those who have so efficiently met their responsibilities, has recently worsened.

"Normally, the agency or distribution contract is drafted by the manufacturer with clauses favorable to it, and a provision to the effect that the relationship may be terminated by either of the parties, by means of prior notice of sixty or ninety days. The distributor or agent efficiently devotes himself to opening the market for the represented product, and, when he begins to derive benefits from the operation, once the market is established, the manufacturer realizes that it would be economically favorable to establish its own sales office or its own branch, and in an unjust manner, without equitable compensation for the efforts expended by the distributor or agent, cancels the relationship. In other cases, the manufacturer finds another person who, the business being established, is willing to distribute the product for less compensation, because he doesn't have to make the initial investment, and is not subject to the risks of the prior distributor or agent.

"The traditional provisions which regulate contracts between private parties have shown themselves to be incapable of protecting the legitimate rights of the distributor or agent, and for this reason it has become necessary to legislate to regulate this relationship and guarantee that the manufacturers will act in good faith, equitably, in a

non-arbitrary manner, and to preserve for the distributor or agent the legitimate rights and expectations inherent in the relationship. Moreover, this will result in greater stability for the distribution relationship.

"This is the grave situation that is sought to be remedied by the approval of this bill. The Department of Commerce of the Commonwealth of Puerto Rico, the Chamber of Commerce of San Juán, and the Agency for Industrial Development regard with accord and heartily endorse the protection and stability that would be given to the relationships between manufacturers and their distributors if this bill should be approved.

"The Committee, unanimously, agreed to recommend the passage of this bill."

Further, the Statement of Motives for Law 75 when enacted in 1964 further highlights the problem sought to be corrected:

"The Commonwealth of Puerto Rico cannot remain indifferent to the growing number of cases in which domestic and foreign enterprises, without just cause, eliminate their dealers, concessionaries, or agents, as soon as these have created a favorable market and without taking into account their legitimate interests.

"The Legislative Assembly of Puerto Rico declares that the reasonable stability in the dealer's relationship in Puerto Rico is vital to the general economy of the country, to the public interest and to the general welfare, and in the exercise of its police power, it deems it necessary to regulate, in as far as pertinent, the field of said relationship, so as to avoid the abuse caused by certain practices."

In the case of the plaintiff below, Arturo Fornaris, Jr., The Ridge Tool Co., subsequent to the enactment

of Law 75, cancelled his 29-year dealership and assumed direct distribution of its products in Puerto Rico. No provision was made to compensate Fornaris for his investment in inventory, facilities or good will, and Fornaris, helpless in the face of this action, turned to the courts for relief.

## THE QUESTIONS ARE SUBSTANTIAL

The issues in this appeal go to the very heart of the constitutional authority of the Commonwealth of Puerto Rico to regulate economic activity within its borders. Furthermore, the decision of the Court of Appeals contravenes the long-standing policy of permitting the states to legislate in this area and wholly disregards the inherent right of the Commonwealth to define a problem of concern to its people and to legislate accordingly. Finally, the Court of Appeals struck down the statute in question without any factual record and in the absence of any definitive interpretation of the statute by the Puerto Rican courts.

### 1. The Court of Appeals Exceeded Its Authority in Denying the Commonwealth of Puerto Rico the Right To Control Business Relationships Within Extremely Broad Limits

The day has passed when state economic regulatory legislation may be struck down on the ground that the premises underlying such legislation are contrary to or repugnant to the views of the federal courts. In holding Law 75 unconstitutional, the Court of Appeals ignored principles set forth by this Court in such cases as *Day-Brite Lighting, Inc.* v. *Missouri*, 342 U.S. 421 (1952):

> "Our recent decisions make plain that we do not sit as a superlegislature to weight the wisdom of legislation nor to decide whether the policy which

it expresses offends the public welfare. The legislative power has limits. . . . But the *state legislatures have constitutional authority to experiment with new techniques; they are entitled to their own standard of the public welfare; they may within extremely broad limits control practices in the business-labor field, so long as specific constitutional prohibitions are not violated and so long as conflicts with valid and controlling federal laws are avoided.*" (at p. 423) [Emphasis added.]

As recently as 1963 in the case of *Ferguson* v. *Skrupa*, 372 U.S. 726, this Court in reversing the decision of the three-judge court invalidating a Kansas statute, said as follows:

"Under the system of government created by our Constitution, it is up to legislatures, not courts, to decide on the wisdom and utility of legislation. There was a time when the Due Process Clause was used by this Court to strike down laws which were thought unreasonable, that is, unwise or incompatible with some particular economic or social philosophy. In this manner the Due Process Clause was used, for example, to nullify laws prescribing maximum hours for work in bakeries, . . . outlawing 'yellow dog' contracts, . . . setting minimum wages for women, . . . and fixing the weight of loaves of bread. . . . This intrusion by the judiciary into the *realm of legislative value judgments* was strongly objected to at the time. . . .

* * * *

"The doctrine. . . —that due process authorizes courts to hold laws unconstitutional when they believed the legislature has acted unwisely—has long been discarded. We have returned to the original constitutional proposition that courts do not substitute their social and economic beliefs

for the judgment of legislative bodies, who are elected to pass laws. As this Court stated in a unanimous opinion in 1941, 'We are not concerned . . . with the wisdom, need, or appropriateness of the legislation.' *Legislative bodies have broad scope to experiment with economic problems,* and this Court does not sit to 'subject the State to an intolerable supervision hostile to the basic principles of our Government and wholly beyond the protection which the general clause of the Fourteenth Amendment was intended to secure.'

* * * *

"We conclude that the Kansas Legislature was free to decide for itself that legislation was needed to deal with the business of debt adjusting. Unquestionably, there are arguments showing that the business of debt adjusting has social utility, but such arguments are properly addressed to the legislature, not to us. We refuse to sit as a 'superlegislature to weigh the wisdom of legislation,' and we emphatically refuse to go back to the time when courts used the Due Process Clause 'to strike down state laws, regulatory of business and industrial conditions, because they may be unwise, improvident, or out of harmony with a particular school of thought.' Nor are we able or willing to draw lines by calling a law 'prohibitory' or 'regulatory.' Whether the legislature takes for its textbook Adam Smith, Herbert Spencer, Lord Keynes, or some other is no concern of ours. The Kansas debt adjusting statute may be wise or unwise. But relief, if any be needed, lies not with us but with the body constituted to pass laws for the State of Kansas." (at pp. 729-732) [Emphasis added.]

The Puerto Rican legislature determined that an evil affecting its citizens and economy existed. Franchised and other dealers who had built up good will through years of effort in the sale and service of par-

ticular products were having their franchises and dealerships terminated arbitrarily and without "just cause" to the detriment of the local economy. The legislature made a value judgment and defined an evil. It devised a technique to place the manufacturer and dealer on more equal ground. The result was Law 75.

The Court of Appeals, however, did not like Law 75 and allowed its distaste for the law's provisions—abundantly evidenced by numerous remarks in its opinion—to obscure its judgment and lead it into serious error. The court improperly, and contrary to the principles established by this Court, intruded into the "realm of legislative value judgments" and denied the Puerto Rican legislature the right to control business practices within "extremely broad limits" and "experiment with new techniques" in the area of business regulation. *Day-Brite Lighting, Inc.* v. *Missouri, supra; Ferguson* v. *Skrupa, supra.*

**2. The Court of Appeals Failed To Follow This Court's Criteria for Determining the Constitutionality of Retrospective Legislation**

The Court of Appeals held the Dealers' Contracts Law of Puerto Rico unconstitutional as retrospectively applied. This alleged restrospectivity is questionable, however, in that the law relates not to conduct prior to enactment but rather to subsequent conduct within a preexisting relationship. But even if the law does operate retrospectively, the Court of Appeals nevertheless failed properly to apply this Court's well-established precepts governing consideration of retrospective enactments. The Court of Appeals, apparently out of its dislike of the statute, accorded those precepts only summary consideration. It noted

that "only minor infringement of established contractual rights may be effected without just compensation" (423 F.2d at 567) and then went on to find that the changes effected by the law were not minor (at 567-568). A little more was said about retrospectivity, nothing significant, but Law 75 was invalidated. Decisions of this Court require that infinitely more complex criteria be considered in evaluating such legislation.

First and foremost, the constitutional validity of any retrospective legislation must be viewed in the light of the conditions which led to its passage. See, *e.g., El Paso* v. *Simmons,* 379 U.S. 497 (1965). More specifically, some examination must be made of the interest of the legislative body, and hence the public, in the passage of such a law, and legislative findings must be accorded great weight. The courts are obliged to ascertain whether any discernible public purpose is being served. As the Court said in *East New York Savings Bank* v. *Hahn,* 326 U.S. 230, 232 (1945):

> "The Blaisdell Case and decisions rendered since . . . yield this governing constitutional principle: when a widely diffused public interest has become enmeshed in a network of multitudinous private arrangements, the authority of the State 'to safeguard the vital interests of its people,' . . . is not to be gainsaid by abstracting one such arrangement from its public context and treating it as though it were an isolated private contract constitutionally immune from impairment."

See also, *Veix* v. *Sixth Ward Building & Loan Ass'n,* 310 U.S. 32 (1940); *Treigle* v. *Acme Homestead Ass'n,* 297 U.S. 189 (1936). The Commonwealth has already represented, both in its pleadings and briefs below

and earlier in this statement that it had a pressing need to redress a severe imbalance in the relationships between the many Puerto Rican dealers and mainland or foreign manufacturers. This "discernible public purpose" found by the Puerto Rican legislature may not be cavalierly dismissed, as it was by the Court of Appeals, but must be examined in the light of the established principles of law laid down by this Court.

This Court has recognized that the test of the constitutionality of retrospective legislation is different in emergency situations than in non-emergency situations. *E.g., Home Bldg. & Loan Ass'n* v. *Blaisdell*, 290 U.S. 398 (1934). Considering the present state of the Puerto Rican economy and the legislatively ascertained problem with respect to the manufacturer-dealer relationship, characterized as "grave", it is submitted that this situation qualifies as an emergency for the purpose of evaluating Law 75. In any event, given the legislature's findings and the prevailing economic considerations, the statute should have been examined in the light of the leading decisions of this Court discussing emergency conditions. *Veix* v. *Sixth Ward Building & Loan Ass'n, supra; Home Building & Loan Ass'n* v. *Blaisdell, supra.* Had this been done, the court could well have reached a different conclusion.

An examination of the relative strengths of manufacturers and dealers, and thus of the degree to which the one may be disadvantaged relative to the other (grossly in the case of the Puerto Rican dealer), is of crucial importance in evaluating this statute. The Court of Appeals, it appears, concluded that manufacturers and dealers stood in relatively the same position and bargained on the same level. (423 F.2d at

567-568) Such an assumption is on its face clearly erroneous. Dealership agreements are notoriously take-it-or-leave-it contracts. In any event, the Puerto Rican legislature made an express finding as to the conditions prevailing in Puerto Rico, and that determination should be controlling unless overwhelmingly contradicted by the evidence. *Day-Brite Lighting, Inc.* v. *Missouri, supra; Ferguson* v. *Skrupa, supra; Williamson* v. *Lee Optical of Oklahoma, Inc.*, 348 U.S. 483 (1955); *East New York Savings Bank* v. *Hahn, supra; West Coast Hotel Co.* v. *Parrish*, 300 U.S. 379 (1937); *Nebbia* v. *New York*, 291 U.S. 502 (1934). Certainly, it should not be summarily brushed aside merely on pleadings and briefs as it was by the court below.

These several errors and omissions by the Court of Appeals require correction by this Court on appeal.

### 3. The Court of Appeals Should Have Abstained From Determining Constitutionality Pending an Authoritative Interpretation of Law 75 by the Puerto Rican Courts

Under the established rules of abstention, where a state court's interpretation of state law may obviate any need for the federal courts to consider its validity under the Federal Constitution, the federal courts should stay their hand so that a constitutional decision is not rendered unnecessarily. *Reetz* v. *Bozanich*, —— U.S. ——, 25 L.Ed. 2d 68 (1970); *United Gas Pipe Line Co.* v. *Ideal Cement Co.*, 369 U.S. 134 (1962); *City of Meridian* v. *Southern Bell Tel. & Tel. Co.*, 358 U.S. 639 (1959).

In the *Reetz* case this Court reversed the invalidation of Alaskan fishing laws by a three-judge court in order to enable the parties to repair to a state tribunal

for a resolution of their state law questions. The case relied on in *Reetz* was *City of Meridian* v. *Southern Bell Tel. & Tel. Co., supra,* where this Court, reversing the action of lower federal courts in invalidating a Mississippi statute, stated at pp. 640-641 as follows:

> "Proper exercise of federal jurisdiction requires that controversies involving unsettled questions of state law be decided in the state tribunals preliminary to a federal court's consideration of the underlying federal constitutional questions. . . . That is especially desirable where the questions of state law are enmeshed with federal questions. . . . Here, the state law problems are delicate ones, the resolution of which is not without substantial difficulty—certainly for a federal court. . . . In such a case, when the state court's interpretation of the statute or evaluation of its validity under the state constitution may obviate any need to consider its validity under the Federal Constitution, the federal court should hold its hand, lest it render a constitutional decision unnecessarily."

The determination of unconstitutionality by the Court of Appeals was inappropriate because the Supreme Court of the Commonwealth of Puerto Rico has rendered no decision as to this law. The only case to which the Court of Appeals made reference was from the Superior Court of Puerto Rico, *Construction Machinery and Supplies Corp.* v. *Construction Machinery Co.,* attached to the District Court's Memorandum and Order which is attached hereto as Appendix B. The *Construction Machinery* case, which upheld the constitutionality of Law 75, is far from being the last word of the courts of the Commonwealth of Puerto Rico on all relevant aspects of the

statute. The statute's provisions as to damages which the Court of Appeals found offensive have not been definitively interpreted by any Puerto Rican court. The damage provisions, and in fact the whole statute, are open to a number of interpretations which when finally resolved by the Puerto Rican courts could greatly diminish or entirely dispel any allegedly offensive features of the statute. Under this procedure, of course, all objections under the due process clause of the Constitution might well be similarly eliminated.

Another most important consideration, wholly ignored by the Court of Appeals, is that Puerto Rico has a civil law system which differs significantly from a common law system. Clearly, therefore, the ablest bodies to evaluate and interpret Law 75 in the first instance are the lower courts and the Supreme Court of Puerto Rico.

**4. The Court of Appeals Improperly Ruled on the Constitutionality of Law 75 in the Absence of a Factual Record**

The court below, drawn no doubt by its predilections against Law 75, assumed that the statute completely abolished an absolute right of the manufacturer unilaterally to terminate the dealership contract, and relied heavily on that and other equally unsupported assumptions in striking down the statute. There was, however, no factual record in this case. It was presented to the Court of Appeals on a ruling denying defendant's motion to dismiss the complaint, and no factual questions whatsoever had been resolved.

The court's action was, therefore, clearly improper. Constitutional decisions cannot be rendered on assumptions but must be based upon adequate facts. As Mr.

Justice Frankfurter stated while still a Harvard Law School Professor:

> "The stuff of these [constitutional] contests are facts, and judgment upon facts. Every tendency to deal with them abstractedly, to formulate them in terms of sterile legal questions, is bound to result in sterile conclusions unrelated to actualities. The reports are strewn with wrecks of legislation considered *in vacuo* and torn out of the context of life which evoked the legislation and alone made it intelligible. These are commonplaces. But they are the heart of the matter of American constitutional law. A failure scrupulously and persistently to observe these commonplaces jeopardizes the traditional American constitutional system. . . ." 37 Harv. L. Rev. 1002, 1002-3 (1924)

The action of the Court of Appeals in expressing its views as to the unconstitutionality of Law 75 in the abstract amounts to an advisory opinion which, it has long been established, the courts may not be called upon to give. *E.g., Alabama* v. *Arizona*, 291 U.S. 286 (1934); *Muskrat* v. *United States*, 219 U.S. 346 (1911).

**5. The Error of the Court of Appeals Is Far-reaching**

The effect of the erroneous decision below is not limited to this isolated case nor merely to other cases arising in Puerto Rico. Many state legislatures and the Congress of the United States have addressed themselves to the problem of the small businessman and have attempted through legislation to protect his investment in hard work and capital where threatened through no fault of his own. If the decision of the Court of Appeals is permitted to stand, state legis-

latures and the Congress of the United States could be inhibited by due process considerations from adopting similar measures applying to continuing business relationships.

The history of the Hart Bill, S. 1967, 91st Cong., 1st Sess. (1969), before the Antitrust and Monopoly Subcommittee of the United States Senate Judiciary Committee, is indicative of the problem. This bill would regulate the relationship between franchisor and franchisee in an attempt to balance the economic power in this relationship, which is now weighted heavily in favor of the former. Opponents of the bill were quick to use the decision of the Court of Appeals in this case to raise alleged constitutional impediments to its passage, and on May 18, 1970 the Subcommittee in executive session "voted to indefinitely postpone" all further action on the measure. 116 Cong. Rec. D 501 (Daily Ed. May 19, 1970).

## CONCLUSION

The United States Court of Appeals for the First Circuit allowed its distaste for Law 75 to lead it, erroneously, to ignore this Court's established precepts of constitutional interpretation applying to state economic regulation. If Law 75 is truly retrospective in its application, the Court of Appeals nevertheless failed to follow this Court's clearly enunciated principles for analyzing and evaluating the effect of such retrospectivity. Further, the federal courts should stay their hand pending a definitive interpretation of Law 75 by the Supreme Court of the Commonwealth of Puerto Rico. In any event, the determination of unconstitutionality of Law 75 in the absence of any factual record was clearly improper.

Allowing the decision of the Court of Appeals to stand would permit the continuation of the practices which the Puerto Rican legislature sought to eliminate. The large number of dealers in the Commonwealth would continue to be disadvantaged and helpless—all to the damage of the economy of Puerto Rico. The decision also has an inhibiting effect on state legislatures and the Congress of the United States in their consideration of similar statutes to protect franchised and other dealers.

The questions presented by this appeal are substantial and of great public importance.

Respectfully submitted,

MIRIAM NAVEIRA DE RODON
Director, Office of Monopolistic Affairs
Puerto Rico Department of Justice
P. O. Box 192
Old San Juan, Puerto Rico 00902
*Counsel for Appellant*